

108TH CONGRESS  
2D SESSION

# H. R. 4007

To amend the Internal Revenue Code of 1986 to allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2004

Mr. ROYCE (for himself, Mr. DREIER, Mr. PAUL, and Mr. ROHRABACHER) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS**

4                       **IN CAFETERIA PLANS AND FLEXIBLE SPEND-**  
5                       **ING ARRANGEMENTS.**

6       (a) IN GENERAL.—Section 125 of the Internal Rev-  
7       enue Code of 1986 (relating to cafeteria plans) is amended

1 by redesignating subsection (h) as subsection (i) and by  
2 inserting after subsection (g) the following new subsection:

3 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH  
4 BENEFITS.—

5 “(1) IN GENERAL.—For purposes of this title,  
6 a plan or other arrangement shall not fail to be  
7 treated as a cafeteria plan solely because qualified  
8 benefits under such plan include a health flexible  
9 spending arrangement under which not more than  
10 \$500 of unused health benefits may be—

11 “(A) carried forward to the succeeding  
12 plan year of such health flexible spending ar-  
13 rangement,

14 “(B) to the extent permitted by sections  
15 223, contributed on behalf of the employee to a  
16 health savings account (as defined in section  
17 223(d)), maintained for the benefit of such em-  
18 ployee, or

19 “(C) contributed to a qualified retirement  
20 plan (as defined in section 4974(c)), or an eligi-  
21 ble deferred compensation plan (as defined in  
22 section 457(b)) of an eligible employer de-  
23 scribed in section 457(e)(1)(A).

24 “(2) SPECIAL RULES FOR TREATMENT OF CON-  
25 TRIBUTIONS TO HEALTH AND RETIREMENT

1 PLANS.—For purposes of this title, contributions  
2 under subparagraph (B) or (C) of paragraph (1)—

3 “(A) shall be treated as a contribution  
4 made by the employee (and includible in the  
5 gross income of such employee) in the case of  
6 a contribution to a health savings account,

7 “(B) shall be treated as elective deferrals  
8 (as defined in section 402(g)(3)) in the case of  
9 contributions to a qualified cash or deferred ar-  
10 rangement (as defined in section 401(k)) or to  
11 an annuity contract described in section 403(b),

12 “(C) shall be treated as employer contribu-  
13 tions to which the employee has a nonforfeitable  
14 right in the case of a plan (other than a plan  
15 described in subparagraph (A)) which is de-  
16 scribed in section 401(a) which includes a trust  
17 exempt from tax under section 501(a),

18 “(D) shall be treated as deferred com-  
19 pensation in the case of contributions to an eli-  
20 gible deferred compensation plan (as defined in  
21 section 457(b)), and

22 “(E) shall be treated in the manner des-  
23 ignated for purposes of section 408 or 408A in  
24 the case of contributions to an individual retire-  
25 ment plan.

1           “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
 2           MENT.—For purposes of this subsection, the term  
 3           ‘health flexible spending arrangement’ means a flexi-  
 4           ble spending arrangement (as defined in section  
 5           106(c)) that is a qualified benefit and only permits  
 6           reimbursement for expenses for medical care (as de-  
 7           fined in section 213(d)(1) (without regard to sub-  
 8           paragraphs (C) and (D) thereof).

9           “(4) UNUSED HEALTH BENEFITS.—For pur-  
 10          poses of this subsection, with respect to an em-  
 11          ployee, the term ‘unused health benefits’ means the  
 12          excess of—

13               “(A) the maximum amount of reimburse-  
 14               ment allowable to the employee during a plan  
 15               year under a health flexible spending arrange-  
 16               ment, taking into account any election by the  
 17               employee, over

18               “(B) the actual amount of reimbursement  
 19               during such year under such arrangement.”.

20          (b) EFFECTIVE DATE.—The amendment made by  
 21          subsection (a) shall apply to taxable years beginning after  
 22          December 31, 2003.

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